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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GLOBAL BTG LLC,
Plaintiff,
v.
NATIONAL AIR CARGO, INC.,
Defendant-Counterclaim
Plaintiff,
v.
GLOBAL BTG LLC, JACOB
HODGES and DOES 1-5,
Counterclaim Defendants.

Case No. 2:11-cv-01657-RSWL-JCGx

**ORDER GRANTING STIPULATED
PROTECTIVE ORDER FOR
CONFIDENTIAL AND HIGHLY
CONFIDENTIAL MATERIAL
PRODUCED IN DISCOVERY**

Hon. Ronald S.W. Lew

Hon. Jay C. Gandhi, Magistrate

1 Having reviewed the Parties' Stipulated Protective Order for Confidential and
2 Highly Confidential Material Produced in Discovery (Exhibit A) and the pleadings
3 in this case, and good cause appearing therefore, it is ORDERED that the Stipulated
4 Protective Order is GRANTED.

5
6
7 DATED: March 19, 2012


Jay C. Gandhi

United States Magistrate Judge

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EXHIBIT A

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**STIPULATED PROTECTIVE
ORDER FOR CONFIDENTIAL AND
HIGHLY CONFIDENTIAL
MATERIAL PRODUCED IN
DISCOVERY**

Hon. Ronald S.W. Lew

Hon. Jay C. Gandhi, Magistrate

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
 3 production of confidential, proprietary, or private information for which special
 4 protection from public disclosure and from use for any purpose other than
 5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
 6 stipulate to and petition the court to enter the following Stipulated Protective Order.
 7 The parties acknowledge that this Order does not confer blanket protections on all
 8 disclosures or responses to discovery and that the protection it affords from public
 9 disclosure and use extends only to the limited information or items that are entitled
 10 to confidential treatment under the applicable legal principles. The parties further
 11 acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective
 12 Order does not entitle them to file confidential information under seal; Civil Local
 13 Rule 79-5 sets forth the procedures that must be followed and the standards that
 14 will be applied when a party seeks permission from the court to file material under
 15 seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the
 18 designation of information or items under this Order.

19 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
 20 how it is generated, stored or maintained) or tangible things that qualify for
 21 protection under Federal Rule of Civil Procedure 26(c).
 22

23 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as
 24 their support staff).

25 2.5 Designating Party: a Party or Non-Party that designates information or
 26 items that it produces in disclosures or in responses to discovery as
 27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 28 ONLY."

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who (1) has been retained by a Party or its counsel to
7 serve as an expert witness or as a consultant in this action, (2) is not a past or
8 current employee of a Party or of a Party's competitor, and (3) at the time of
9 retention, is not anticipated to become an employee of a Party or of a Party's
10 competitor.

11 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
12 Information or Items: extremely sensitive "Confidential Information or Items," the
13 disclosure of which to another Party or Non-Party would create a substantial risk of
14 serious harm that could not be avoided by less restrictive means.

15 2.9 [Intentionally omitted.]

16 2.10 House Counsel: attorneys who are employees of a party to this action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.11 Non-Party: any natural person, partnership, corporation, association,
20 or other legal entity not named as a Party to this action.

21 2.12 Outside Counsel of Record: attorneys who are not employees of a
22 party to this action but are retained to represent or advise a party to this action and
23 have appeared in this action on behalf of that party or are affiliated with a law firm
24 which has appeared on behalf of that party.

25 2.13 Party: any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).
28

1 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this action.

3 2.15 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.16 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.”

10 2.17 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12
13 **3. SCOPE**

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also (1) any information copied or
16 extracted from Protected Material; (2) all copies, excerpts, summaries, or
17 compilations of Protected Material; and (3) any testimony, conversations, or
18 presentations by Parties or their Counsel that might reveal Protected Material.
19 However, the protections conferred by this Stipulation and Order do not cover the
20 following information: (a) any information that is in the public domain at the time
21 of disclosure to a Receiving Party or becomes part of the public domain after its
22 disclosure to a Receiving Party as a result of publication not involving a violation
23 of this Order, including becoming part of the public record through trial or
24 otherwise; and (b) any information known to the Receiving Party prior to the
25 disclosure or obtained by the Receiving Party after the disclosure from a source
26 who obtained the information lawfully and under no obligation of confidentiality to
27 the Designating Party. Any use of Protected Material at trial shall be governed by a
28 separate agreement or order.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.
10

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.
13 Each Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. To the extent it is practical to do so, the
16 Designating Party must designate for protection only those parts of material,
17 documents, items, or oral or written communications that qualify – so that other
18 portions of the material, documents, items, or communications for which protection
19 is not warranted are not swept unjustifiably within the ambit of this Order.
20

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (e.g., to unnecessarily encumber or retard the case development process or
24 to impose unnecessary expenses and burdens on other parties) expose the
25 Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection at all or do not qualify for the
28 level of protection initially asserted, that Designating Party must promptly notify all

1 other parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents,
9 but excluding transcripts of depositions or other pretrial or trial proceedings), that
10 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page of document that
12 contains protected material. If only a portion or portions of the material in a
13 document qualifies for protection, the Producing Party must, to the extent feasible,
14 clearly identify the protected portion(s) (e.g., by making appropriate markings in
15 the margins), specifying for each portion the level of protection being asserted.

16 A Party or Non-Party that makes original documents or materials available
17 for inspection need not designate them for protection until after the inspecting Party
18 has indicated which material it would like copied and produced. During the
19 inspection and before the designation, all of the material made available for
20 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY.” After the inspecting Party has identified the documents it wants copied
22 and produced, the Producing Party must determine which documents, or portions
23 thereof, qualify for protection under this Order. Then, before producing the
24 specified documents, the Producing Party must affix the appropriate legend
25 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY”) to each page of a document that contains Protected Material. If only a
27 portion or portions of the material in a document qualifies for protection, the
28 Producing Party also must, to the extent it is practicable, clearly identify the

1 protected portion(s) (e.g., by making appropriate markings in the margins),
2 specifying for each portion the level of protection being asserted.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings,
4 that the Designating Party identify on the record, before the close of the deposition,
5 hearing, or other proceeding, all protected testimony and specify the level of
6 protection being asserted. When it is impractical to identify separately each portion
7 of testimony that is entitled to protection and it appears that substantial portions of
8 the testimony may qualify for protection, the Designating Party may invoke on the
9 record (before the deposition, hearing, or other proceeding is concluded) a right to
10 have up to 21 days after the deposition to identify the specific portions of the
11 testimony as to which protection is sought and to specify the level of protection
12 being asserted. Only those portions of the testimony that are appropriately
13 designated for protection within those 21 days shall be covered by the provisions of
14 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
15 the deposition or up to 21 days afterwards if that period is properly invoked, that
16 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 Parties shall give the other parties notice if they reasonably expect a
19 deposition, hearing or other proceeding to include Protected Material so that the
20 other parties can ensure that only authorized individuals who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
22 proceedings. The use of a document as an exhibit at a deposition shall not in any
23 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
24 – ATTORNEYS’ EYES ONLY.”

25 Transcripts containing Protected Material shall have an obvious legend on
26 the title page that the transcript contains Protected Material, and the title page shall
27 be followed by a list of all pages (including line numbers as appropriate) that have
28 been designated as Protected Material and the level of protection being asserted by

1 the Designating Party. The Designating Party shall inform the court reporter of
2 these requirements. Any transcript that is prepared before the expiration of a 21-
3 day period for designation shall be treated during that period as if it had been
4 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its
5 entirety unless otherwise agreed. After the expiration of that period, the transcript
6 shall be treated only as actually designated.

7 (c) for information produced in some form other than documentary and for
8 any other tangible items, that the Producing Party affix in a prominent place on the
9 exterior of the container or containers in which the information or item is stored the
10 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
11 EYES ONLY." If only a portion or portions of the information or item warrant
12 protection, the Producing Party, to the extent practicable, shall identify the
13 protected portion(s) and specify the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party's right to secure protection under this Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21
22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time. Unless a prompt challenge to a
24 Designating Party's confidentiality designation is necessary to avoid foreseeable,
25 substantial unfairness, unnecessary economic burdens, or a significant disruption or
26 delay of the litigation, a Party does not waive its right to challenge a confidentiality
27 designation by electing not to mount a challenge promptly after the original
28 designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging
3 and describing the basis for each challenge. To avoid ambiguity as to whether a
4 challenge has been made, the written notice must recite that the challenge to
5 confidentiality is being made in accordance with this specific paragraph of the
6 Protective Order. The parties shall attempt to resolve each challenge in good faith
7 and must begin the process by conferring directly (in voice to voice dialogue; other
8 forms of communication are not sufficient) within 14 days of the date of service of
9 notice. In conferring, the Challenging Party must explain the basis for its belief that
10 the confidentiality designation was not proper and must give the Designating Party
11 an opportunity to review the designated material, to reconsider the circumstances,
12 and, if no change in designation is offered, to explain the basis for the chosen
13 designation. A Challenging Party may proceed to the next stage of the challenge
14 process only if it has engaged in this meet and confer process first or establishes
15 that the Designating Party is unwilling to participate in the meet and confer process
16 in a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
18 court intervention, the Designating Party shall file and serve a motion to retain
19 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
20 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
21 days of the parties agreeing that the meet and confer process will not resolve their
22 dispute, whichever is earlier.¹ Each such motion must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and
24 confer requirements imposed in the preceding paragraph. Failure by the
25 Designating Party to make such a motion including the required declaration within
26 21 days (or 14 days, if applicable) shall automatically waive the confidentiality

27 ¹ The parties recognize that it may be appropriate in certain circumstances for the parties to agree to shift the burden
28 to move on the Challenging Party after a certain number of challenges are made to avoid an abuse of the process. If
such an agreement is reached, the burden of persuasion will remain on the Designating Party.

1 designation for each challenged designation. In addition, the Challenging Party
2 may file a motion challenging a confidentiality designation at any time if there is
3 good cause for doing so, including a challenge to the designation of a deposition
4 transcript or any portions thereof. Any motion brought pursuant to this provision
5 must be accompanied by a competent declaration affirming that the movant has
6 complied with the meet and confer requirements imposed by the preceding
7 paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has
12 waived the confidentiality designation by failing to file a motion to retain
13 confidentiality as described above, all parties shall continue to afford the material in
14 question the level of protection to which it is entitled under the Producing Party's
15 designation until the court rules on the challenge.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17
18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of Section 15 below (FINAL
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.
28

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to
7 disclose the information for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
9 A;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and
12 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation
19 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
20 A);

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement
23 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
24 ordered by the court. Pages of transcribed deposition testimony or exhibits to
25 depositions that reveal Protected Material must be separately bound by the court
26 reporter and may not be disclosed to anyone except as permitted under this
27 Stipulated Protective Order;

28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information; and

2 (h) any mediator or arbitrator the parties hereto engage in this matter or that
3 the court appoints, provided such person has signed the “Acknowledgement and
4 Agreement to Be Bound” (Exhibit A).

5 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
7 in writing by the Designating Party, a Receiving Party may disclose any
8 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to
12 disclose the information for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
15 necessary for this litigation, (2) who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth
17 in paragraph 7.4(a)(2), below, have been followed;

18 (c) the court and its personnel;

19 (d) court reporters and their staff, professional jury or trial consultants, mock
20 jurors and Professional Vendors to whom disclosure is reasonably necessary for
21 this litigation and who have signed the “Acknowledgment and Agreement to Be
22 Bound” (Exhibit A);

23 (f) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information; and

25 (g) any mediator or arbitrator the parties hereto engage in this matter or that
26 the court appoints, provided such person has signed the “Acknowledgement and
27 Agreement to Be Bound” (Exhibit A).
28

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
3 Experts.

4 (a) Unless otherwise ordered by the court or agreed to in writing by the
5 Designating Party or governed by 7.4(b), *infra*, a Party that seeks to disclose to an
6 Expert (as defined in this Order) any information or item that has been designated
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
8 paragraph 7.3(b) first must make a written request to the Designating Party that (1)
9 identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
10 EYES ONLY” information that the Receiving Party seeks permission to disclose to
11 the Expert, (2) sets forth the full name of the Expert and the city and state of his or
12 her primary residence, (3) attaches a copy of the Expert’s current resume, (4)
13 identifies the Expert’s current employer(s), (5) identifies each person or entity from
14 whom the Expert has received compensation or funding for work in his or her areas
15 of expertise or to whom the expert has provided professional services, including in
16 connection with a litigation, at any time during the preceding five years,² and (6)
17 identifies (by name and number of the case, filing date, and location of court) any
18 litigation in connection with which the Expert has offered expert testimony,
19 including through a declaration, report, or testimony at a deposition or trial, during
20 the preceding five years.³

21 (b) CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” information or items may be disclosed to an Expert without
23 disclosure of the identity of the Expert as long as the Expert is not a current officer,
24 director, or employee of a competitor of a Party or anticipated to become one.

25 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
26 Expert should provide whatever information the Expert believes can be disclosed without violating any
27 confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with
the Designating Party regarding any such engagement.

28 ³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to
the termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 (c) A Party that makes a request and provides the information specified in the
2 preceding respective paragraphs may disclose the subject Protected Material to the
3 identified Expert unless, within 7 days of delivering the request, the Party receives a
4 written objection from the Designating Party. Any such objection must set forth in
5 detail the grounds on which it is based.

6 (d) A Party that receives a timely written objection must meet and confer
7 with the Designating Party (through direct voice to voice dialogue) to try to resolve
8 the matter by agreement within 7 days of the written objection. If no agreement is
9 reached, the Party seeking to make the disclosure to the Expert may file a motion as
10 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
11 applicable) seeking permission from the court to do so. Any such motion must
12 describe the circumstances with specificity, set forth in detail the reasons why the
13 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
14 disclosure would entail, and suggest any additional means that could be used to
15 reduce that risk. In addition, any such motion must be accompanied by a competent
16 declaration describing the parties' efforts to resolve the matter by agreement (i.e.,
17 the extent and the content of the meet and confer discussions) and setting forth the
18 reasons advanced by the Designating Party for its refusal to approve the disclosure.

19 In any such proceeding, the Party opposing disclosure to the Expert shall
20 bear the burden of proving that the risk of harm that the disclosure would entail
21 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
22 the Protected Material to its Expert.

23
24 **8.** [Intentionally omitted]

25
26 **9.** [Intentionally omitted]
27
28

1 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall
8 include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to
10 issue in the other litigation that some or all of the material covered by the subpoena
11 or order is subject to this Protective Order. Such notification shall include a copy
12 of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the Designating Party whose Protected Material may be affected.⁴

15 If the Designating Party timely seeks a protective order, the Party served with
16 the subpoena or court order shall not produce any information designated in this
17 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY” before a determination by the court from which the subpoena or
19 order issued, unless the Party has obtained the Designating Party’s permission. The
20 Designating Party shall bear the burden and expense of seeking protection in that
21 court of its confidential material – and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this action to disobey
23 a lawful directive from another court.
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26

27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from
which the subpoena or order issued.

1 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced
6 by Non-Parties in connection with this litigation is protected by the remedies and
7 relief provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party’s confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:

13 1. promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a confidentiality
15 agreement with a Non-Party;

16 2. promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and a
18 reasonably specific description of the information requested; and

19 3. make the information requested available for inspection by the
20 Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this
22 court within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party’s confidential information responsive
24 to the discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control that
26 is subject to the confidentiality agreement with the Non-Party before a
27
28

determination by the court.⁵ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this

⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Protective Order no Party waives any right it otherwise would have to object to
2 disclosing or producing any information or item on any ground not addressed in
3 this Stipulated Protective Order. Similarly, no Party waives any right to object on
4 any ground to use in evidence of any of the material covered by this Protective
5 Order.

6 14.3 Export Control. Disclosure of Protected Material shall be subject to all
7 applicable laws and regulations relating to the export of technical data contained in
8 such Protected Material, including the release of such technical data to foreign
9 persons or nationals in the United States or elsewhere. The Producing Party shall
10 be responsible for identifying any such controlled technical data, and the Receiving
11 Party shall take measures necessary to ensure compliance.

12 14.4 Filing Protected Material. Without written permission from the
13 Designating Party or a court order secured after appropriate notice to all interested
14 persons, a Party may not file in the public record in this action any Protected
15 Material. A Party that seeks to file under seal any Protected Material must comply
16 with Civil Local Rule 79-5. Protected Material may only be filed under seal
17 pursuant to a court order authorizing the sealing of the specific Protected Material
18 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
19 request establishing that the Protected Material at issue is privileged, protectable as
20 a trade secret, or otherwise entitled to protection under the law. If a Receiving
21 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
22 5 is denied by the court, then the Receiving Party may file the Protected Material in
23 the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by
24 the court.

25 14.5. Redactions. Notwithstanding any of the above provisions of this
26 Order, parties are expressly permitted to redact from any documents they produce
27 during discovery the following: any sensitive personal information (e.g., social
28 security numbers and personal bank account numbers), and any material they

1 believe in good faith to be subject to attorney-client privilege or work-product
2 immunity. Each such redaction, regardless of size, will be clearly labeled. To the
3 extent the parties dispute the propriety of a particular redaction, then the party
4 challenging the redaction may request appropriate relief from the court.

5
6 **15. FINAL DISPOSITION**

7 Within 60 days after the final disposition of this action, as defined in
8 paragraph 4, each Receiving Party must return all Protected Material to the
9 Producing Party or destroy such material. As used in this subdivision, “all
10 Protected Material” includes all copies, abstracts, compilations, summaries, and any
11 other format reproducing or capturing any of the Protected Material. Whether the
12 Protected Material is returned or destroyed, the Receiving Party must submit a
13 written certification to the Producing Party (and, if not the same person or entity, to
14 the Designating Party) by the 60-day deadline that (1) identifies (by category,
15 where appropriate) all the Protected Material that was returned or destroyed and (2)
16 affirms that the Receiving Party has not retained any copies, abstracts,
17 compilations, summaries or any other format reproducing or capturing any of the
18 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
19 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
21 reports, attorney work product, and consultant and expert work product, even if
22 such materials contain Protected Material. Any such archival copies that contain or
23 constitute Protected Material remain subject to this Protective Order as set forth in
24 Section 4 (DURATION).

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27 ///

28 ///

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

PERKINS COIE LLP

DATED: March 14, 2012

_____/s/Nathan M. Smith_____
Donald J. Kula, Bar No. 144342
Nathan M. Smith, Bar No. 255212

*Attorneys for Plaintiff-Counterclaim
Defendant Global BTG LLC and
Counterclaim Defendant Jacob Hodges*

JENNER & BLOCK LLP

DATED: March 14, 2012

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____ [address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on March ___, 2012, in the case of Global BTG
LLC v. National Air Cargo, Inc. v. Global BTG LLC, Jacob Hodges, and Does 1-5,
Case No. 2:11-cv-01657-RSWL-JCGx. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ of _____
_____ [address and telephone number] as
my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____